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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,929	04/19/2005	Marc Willem Theodorus Klein Middelink	NL 021091	5654
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EXAMINER				
CZEKAJ, DAVID J				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/531,929

**Applicant(s)**

KLEIN MIDDELINK ET AL.

**Examiner**

DAVID CZEKAJ

**Art Unit**

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 5 is rejected under 35 U.S.C. 101 because the claim has improper language regarding the storage medium (Please see the MPEP 2106 Section IV. Determine Whether the Claimed Invention Complies with 35 U.S.C. 101). The claim fails to disclose what executes the signal stored on the medium for performing the processing. Furthermore, there is no indication in the claim as to whether the storage medium is directed towards transitory or non-transitory subject matter. In the state of the art, transitory signals are commonplace as a medium for transmitting computer instruction and thus, in the absence of any evidence to the contrary and given the broadest reasonable interpretation, the scope of a "storage medium" covers a signal per se.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (7340762) in view of Wu et al. (6907070), (hereinafter referred to as "Wu").

Regarding claim 1, Kim discloses an apparatus that relates to digital television networks (Kim: column 1, lines 17-20). This apparatus comprises "forming an embedded data descriptor for signaling content in the embedded data" (Kim: column 5, lines 29-37; column 7, lines 1-5) and "providing the main data descriptor outside the embedded data and embedded data descriptor" (Kim: column 6, lines 5-20; column 7, lines 1-5). While Kim fails to explicitly show the main data descriptor outside the embedded data, Kim does disclose the main data can be embedded in other descriptors (Kim: column 7, lines 1-5). Since the main data can be embedded in other descriptors, the main data is outside the other embedded data. However, Kim fails to disclose the embedded data containing enhancement data as claimed. Wu teaches "signaling embedded data that comprises enhancement data for enhancing the main data during a reproduction of the main data configured to recognize the embedded data descriptor" (Wu: column 3, lines 54-65, wherein enhancement data is the enhancement bit-stream). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to take the apparatus disclosed by Kim and add the enhancement data taught by Wu since Wu discloses in column 3, lines 55-62, that such an enhancement would easily adapt to the channel bandwidth fluctuations.

Regarding claim 2, note the examiners rejection for claim 1.

Regarding claims 3 and 5-9, note the examiners rejection for claim 1.

2. Claims 10, 12, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (7340762) in view of Wu et al. (6907070), (hereinafter referred to as "Wu") in further view of Liljeryd et al. (6708145), (hereinafter referred to as "Liljeryd").

Regarding claims 10, 12, 14, and 16, note the examiners rejection for claim 1, and in addition, claims 10, 12, 14, and 16 differ from claim 1 in that claims 10, 12, 14, and 16 further require the enhancement data to be spectral band replication. Liljeryd teaches that in prior art processing devices, the high frequency bands suffer from insufficient noise (Liljeryd: column 2, lines 1-3). To help alleviate this problem, Liljeryd discloses "the enhancement data comprises information suitable for performing spectral band replication of the audio data" (Liljeryd: column 7, lines 30-35). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the SBR taught by Liljeryd in order to better help solve the noise problem noted above.

3. Claims 11, 13, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (7340762) in view of Wu et al. (6907070), (hereinafter referred to as "Wu") in further view of Terauchi et al. (5592398), (hereinafter referred to as "Terauchi").

Regarding claims 11, 13, 15, and 17, note the examiners rejection for claim 1, and in addition, 11, 13, 15, and 17 differ from claim 1 in that claims 11,

13, 15, and 17 further require the enhancement data to extend the number of audio channels. Terauchi teaches that prior art processing devices destroy the data block unit and thus channel multiplexing and demultiplexing cannot be executed (Terauchi: column 3, lines 42-48). To help alleviate this problem, Terauchi discloses "the enhancement data comprises information suitable for extension of a number of channels of the audio data" (Terauchi: figures 1A and 4; column 1, lines 59-65, wherein the audio extension is increasing the number of audio channels). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the audio extension taught by Terauchi in order to obtain an apparatus that does not destroy data blocks.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID CZEKAJ whose telephone number is (571)272-7327. The examiner can normally be reached on Mon-Thurs and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on (571) 272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dave Czekaj/  
Primary Examiner, Art Unit 2621